

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed August 31, 2004. Upon entry of the amendments in this response, claims 1 and 3 - 18 remain pending. In particular, Applicants have added claim 18, have amended claims 1, 4, 6, 10, 16 and 17, and have canceled claim 2 without prejudice, waiver, or disclaimer. Applicants have canceled claim 2 merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of this canceled claim in a continuing application, if Applicants so choose, and do not intend to dedicate the canceled subject matter to the public. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

Rejections Under 35 U.S.C. §102

The Office Action indicates that claims 1 – 4, 6 – 10 and 12 - 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by *Amir*. With respect to claim 2, Applicants have canceled this claim and respectfully assert that the rejection as to this claim has been rendered moot. With respect to the remaining claims, Applicants respectfully traverse the rejections.

In this regard, *Amir* involves a method and apparatus for analyzing a scene containing multiple subjects to determine which pupils correspond to which subjects. In the disclosure of *Amir*, several other methods are discussed that also involve pupil detection. Notably, these other methods appear to be involved with eye tracking and other ancillary fields. Of particular interest, these other methods (as well as *Amir*) involve detection of pupils.

With respect to *Amir*, the disclosed method also relates that a camera can capture an image when a number of detected pupils equals a number of pupils input by the photographer. this ensures that the people in the photograph have their eyes open and are looking toward the

camera. However, this method does not ensure that the people in the photograph have their eyes open to a desired degree as is embodied in the present invention. That is, although *Amir* may ensure that the people in a photograph have their eyes open, the present invention can additionally ensure that their eyes are open enough to present a threshold amount of sclera. Thus, the amended claims clearly and patentably define over the cited teachings.

In this regard, Applicants have amended claim 1 to recite:

1. A method for capturing an image, comprising the steps of:
specifying a user-adjustable sclera setting corresponding to a threshold amount of sclera desired to be present in a captured image with respect to faces in the captured image;
storing the sclera setting in a memory;
determining that an image preview includes faces;
determining an amount of sclera in the image preview associated with each of the faces;
retrieving the sclera setting; and
capturing the image when the determined amount of sclera of each of the faces in the image preview is at least equal to the sclera setting.

(Emphasis added).

Applicants respectfully assert that *Amir* is legally deficient for the purpose of anticipating claim 1. In particular, Applicants respectfully assert that *Amir* does not teach or otherwise disclose at least the features/limitations emphasized above in claim 1. That is, *Amir* uses a preset algorithm for determining the presence of pupils, whereas claim 1 defines an invention that not only determines an amount of sclera, but also enables a user to specify a threshold sclera setting that is used for determining whether an image is to be captured. Therefore, Applicants respectfully assert that claim 1 is in condition for allowance.

Since claims 3 and 4 are dependent claims that incorporate all the features/limitations of claim 1, Applicant respectfully asserts that these claims also are in condition for allowance. Additionally, these claims recite other features/limitations that can serve as an independent basis for patentability.

With respect to claim 6, Applicants have amended that claim to recite:

6. A system for capturing digital images, comprising:
a photosensor configured to detect an image;
a memory configured to store a user-adjustable sclera setting corresponding to a threshold amount of sclera desired to be present in a captured image with respect to faces in the captured image;
a processor configured to determine when at least one face is present in the detected image, and further configured to determine an amount of sclera present in each said face so that the determined amount of sclera is compared to the sclera setting with respect to each said face; and
an actuator configured to initiate capture of the detected image such that the detected image is captured when the determined amount of sclera with respect to each said face is at least equal to the sclera setting.

(Emphasis added).

Applicants respectfully assert that *Amir* is legally deficient for the purpose of anticipating claim 6. In particular, Applicants respectfully assert that *Amir* does not teach or otherwise disclose at least the features/limitations emphasized above in claim 6. That is, *Amir* uses a preset algorithm for determining the presence of pupils, whereas claim 6 defines an invention that not only determines an amount of sclera, but enables a user to store a threshold sclera setting that is used for determining whether an image is to be captured. Therefore, Applicants respectfully assert that claim 6 is in condition for allowance.

Since claims 7 - 10 and 12 - 15 are dependent claims that incorporate all the features/limitations of claim 6, Applicant respectfully asserts that these claims also are in condition for allowance. Additionally, these claims recite other features/limitations that can serve as an independent basis for patentability.

Rejections Under 35 U.S.C. §103

The Office Action indicates that claims 5 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Amir* in view of *Davida*. The Office Action also indicates that claims 16 – 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Amir*. Applicants respectfully traverse the rejections.

With respect to claims 5 and 11, these claims are dependent claims that incorporate all the features/limitations of claims 1 and 6, respectively. Since *Davida* does not teach or reasonably suggest at least the features that are indicated above as lacking in *Amir*, Applicant respectfully asserts that these claims also are in condition for allowance for at least this reason. Additionally, these claims recite other features/limitations that can serve as an independent basis for patentability.

With respect to claim 16, Applicants have amended that claim to recite:

16. A program for increasing an amount of visible sclera in a captured image, the program being stored as a computer readable medium, the program comprising:

logic configured to arm the program;

logic configured to determine whether a preview image includes at least one face;

logic configured to determine whether the preview image includes an amount of sclera corresponding to a threshold amount of sclera desired to be present in a captured image with respect to faces in the captured image;
and

logic configured to capture a digital image responsive to a user input, such that:

an image is captured when the preview image does not include a face,

the image is captured when the preview image includes at least one face and the preview image includes at least the amount of sclera corresponding to the threshold amount of sclera, and

the image is not captured when the preview image includes a face and does not include at least the amount of sclera corresponding to the threshold amount of sclera.

(Emphasis added).

Applicant respectfully asserts that the cited art, either individually or in combination, is legally deficient for the purpose of rendering claim 16 unpatentable. In particular, Applicant respectfully asserts that none of the references or combinations thereof teaches or reasonably suggests at least the features/limitations emphasized above in claim 16. Therefore, Applicant respectfully asserts that claim 16 is in condition for allowance.

Since claim 17 is a dependent claim that incorporates all the features/limitations of claim 16, Applicant respectfully asserts that this claim also is in condition for allowance.

Additionally, this claim recites other features/limitations that can serve as an independent basis for patentability.

Newly Added Claims

In this response, Applicants have added new claim 18. Applicant respectfully asserts that this claim is in condition for allowance for at least the reason that this claim is a dependent claim that incorporates all the features/limitations of claim 6, the allowability of which is set forth above. No new matter has been added.

Cited Art Made of Record

The cited art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

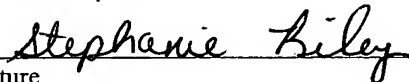
Respectfully submitted,



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